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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of) MM DOCKET NO. 92-302
JOHN M. GIANNETTINO) File No. BPH-910719MA
JOHN T. PRITCHARD) File No. BPH-910722MI
For a Construction Permit for)
a New FM Station on Channel)
276C3 at Burlington, Iowa)
To: Administrative Law Judge
Richard L. Sippel

MASS MEDIA BUREAU'S CONSOLIDATED COMMENTS ON
JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT
and
CONTINGENT PETITION FOR LEAVE TO AMEND

1. On January 12, 1993, John M. Giannettino ("Giannettino") and John T. Pritchard ("Pritchard") filed a Joint Request for Approval of Settlement Agreement and for Grant of Application ("Joint Request"). Also, on January 12, 1993, Pritchard filed a Contingent Petition for Leave to Amend and for Other Relief ("Petition").¹ The Mass Media Bureau submits the following consolidated comments.

2. The Joint Request is accompanied by a settlement agreement which contemplates the grant of the Pritchard application and the dismissal with prejudice of the Giannettino application. In consideration for the dismissal of the

¹ Pritchard filed a supplement to his Petition on January 22, 1993.

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Giannettino application, Pritchard proposes to pay Giannettino the sum of \$20,000, or such lesser amount that Giannettino demonstrates to the Commission is the total amount of his bona fide expenses.

3. Giannettino and Pritchard state that the settlement agreement would serve the public interest by hastening the earlier inauguration of a new FM service in Burlington, Iowa. Both applicants also declare under penalty of perjury that their respective applications were not filed for the purpose of reaching or carrying out a settlement. Additionally, Pritchard provides documentation demonstrating legitimate and prudent expenses totaling \$20,249.39.

4. In his Petition, Pritchard seeks to withdraw his commitments to divest Station KKMI(FM), Burlington, Iowa, and to work full time in a management level position at his proposed new station. Pritchard states that the withdrawal of such commitments is consistent with Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 FCC Rcd 157 (1990), recon. granted in part, 6 FCC Rcd 3403 (1991). Pritchard also provides a technical exhibit showing that his ownership interests in two commercial FM stations in the same radio market (the proposed new station and Station KKMI(FM)) would comply with § 73.3555 of the Commission's Rules, as recently amended. See Revision of Radio Rules and Policies, 7

FCC Rcd 2755 (1992).

5. The Bureau submits that the Joint Request satisfies the requirements of § 73.3525 of the Commission's Rules, which implements § 311(c)(3) of the Communications Act of 1934, as amended. Specifically, a copy of the settlement agreement has been timely filed, and the applicants have established that approval of the agreement would serve the public interest and that neither application was filed for an improper purpose. Additionally, Giannettino has demonstrated that the monetary consideration that he will receive does not exceed his legitimate and prudent expenses. See Settlement Agreements, 6 FCC Rcd 85 (1990), modified, 6 FCC Rcd 2901 (1991).

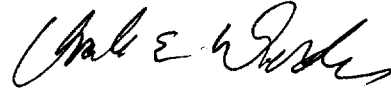
6. The Bureau also supports Pritchard's requests to withdraw his divestiture and integration commitments. In Proposals to Reform the Commission's Comparative Hearing Process, supra, the Commission specifically retained its so-called Ruarch policy (see Ruarch Associates, 103 FCC 2d 1178 (1986)), pursuant to which the Commission allows applicants to withdraw their comparative promises. Pritchard's request complies with the requirements of that policy. Moreover, Pritchard's ownership of both the new FM station and Station KKMI(FM), Burlington, Iowa, is consistent with § 73.3555(a)(1) of the Commission's Rules. As recently amended, § 73.3555(a)(1) allows one entity in a radio market with 14 or fewer commercial radio stations to own two FM

stations in that market, provided the owned stations represent less than 50% of the stations in the market. In the instant case, Pritchard has shown that his two stations will represent 40% of the five radio stations authorized to serve Burlington, and 20% of the ten radio stations in the relevant radio market.

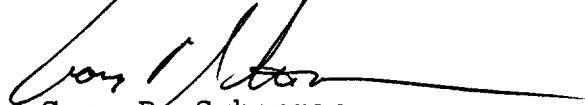
7. Based on the foregoing, the Joint Request should be granted, the settlement agreement should be approved, the Giannettino application should be dismissed with prejudice, reimbursement to Giannettino in the amount of \$20,000 should be approved, and Pritchard should be permitted to withdraw his divestiture and integration commitments. However, the Bureau notes that the Hearing Designation Order, DA 92-1669 (released December 23, 1992), at ¶ 7(1), specified a contingent environmental issue against Pritchard. Consequently, Pritchard's

application may not be granted until this issue is favorably resolved.²

Respectfully submitted,
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January 28, 1993

² The Bureau further notes that in the event Pritchard's application is granted, the HDO, at ¶ 11, has directed the construction permit to contain a specific condition related to matters involving the Federal Aviation Administration.

CERTIFICATE OF SERVICE

I, Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certify that I have, on this 28th day of January 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing, "MASS MEDIA BUREAU'S CONSOLIDATED COMMENTS ON JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT and CONTINGENT PETITION FOR LEAVE TO AMEND" to:

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